

CHAPTER 22

LOCAL PLANNING BOARD OR COMMISSION

SECTION.

45-22-6. Comprehensive plan — Formula-
tion and adoption.

SECTION.

45-22-8. Reports.

45-22-6. Comprehensive plan — Formulation and adoption.

— A planning board or commission shall prepare a comprehensive plan for the development of the city or town. Such a plan shall, among other things, show the general arrangement of and goals, objectives and standards for land use, transportation routes and facilities, public facilities and services, renewal or rehabilitation programs, housing programs, including cooperative housing programs not limited to but also involving limited equity cooperative housing designed for low and moderate income residents, conservation areas, historic preservation areas and environmental protection programs, together with a recommended program of actions and improvements deemed necessary to implement the features of said plan. The planning board or commission may, at its discretion, hold public hearings on the comprehensive plan or any elements of the comprehensive plan. The comprehensive plan and all elements thereof shall be in general conformity with the goals, objectives, policies and general arrangements contained in applicable state plan or element thereof.

The planning board or commission shall adopt said comprehensive plan or elements thereof and shall, upon adoption, use said plan or elements thereof as a guide to its actions in areas relating to the adopted plan or elements. At intervals of no greater than five (5) years, the board or commission shall review said comprehensive plan or elements thereof and make any modifications, amendments or additions deemed necessary in the light of current and projected community development trends and needs.

Following adoption of a comprehensive plan or any element thereof by the planning board or commission and upon recommendation of said board or commission, the city or town council may, following a public hearing, adopt said comprehensive plan or element thereof as a statement of city or town policy and a guide for community action in matters relating to community development. Any comprehensive plan or element thereof may be modified or amended by said city or town council following a public hearing. Any such proposed modification or amendment shall be referred to the planning board or commission for its recommendation at least thirty (30) days prior to the date of the public hearing by the city or town council. Failure of the planning board or commission to forward a recommendation to the city or town council within the thirty (30) day period

shall be deemed an approval of the proposed modification or amendment by the board or commission. The affirmative vote of at least two thirds ($\frac{2}{3}$) of the city or town council shall be required to adopt any modification or amendment to the comprehensive plan or element thereof where the planning board or commission has rendered an adverse recommendation.

Any comprehensive plan or element thereof which has been adopted by a city or town council prior to May 4, 1972 shall be considered adopted for the purposes of this chapter, however, any adoption, modification, or amendment of a comprehensive plan or element thereof subsequent to [May 4, 1972] shall be made in accordance with the procedures and requirements set forth in this chapter.

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2. any date during which such an application was pending before a local permit granting authority,
3. the date of disposition of such an application, or
4. the date of withdrawal of such an application.

An application shall not be considered a prior application if it concerns insubstantial construction or modification of the preexisting use of the land.

(i) **Planned Production** - A decision by the Board to deny a comprehensive permit or grant a permit with conditions shall be consistent with local needs if the municipality has adopted an affordable housing plan approved by the Department pursuant to which there is an increase in its number of low or moderate income housing units (which are eligible for inclusion on the subsidized housing inventory) by at least 3/4 of 1% of total units every calendar year until that percentage exceeds 10 percent of total units.

1. The affordable housing plan shall be based upon a comprehensive housing needs assessment, which must include an analysis of the most recent decennial census data of the municipality's demographics and housing stock; of development constraints and limitations, as well as of the municipality's ability to mitigate them; and of the municipality's infrastructure.

2. The affordable housing plan shall address the matters set out in guidelines adopted by the Department, including:

- a. a mix of housing, such as rental and homeownership opportunities for families, individuals, persons with special needs, and the elderly that are consistent with local and regional needs and feasible within the housing market in which they will be situated;
- b. the strategy by which the municipality will achieve its housing goals established by its comprehensive needs assessment; and
- c. a description of the use restrictions which will be imposed on low or moderate income housing units to ensure that each unit will remain affordable long term to and occupied by low or moderate income households.

3. The affordable housing plan shall address one or more of the following, but shall not be limited to:

- a. the identification of zoning districts or geographic areas which permit residential uses which the municipality proposes to modify for the purposes of low and moderate income housing developments;
- b. the identification of specific sites for which the municipality will encourage the filing of comprehensive permit applications pursuant to M.G.L. c. 40B, section 21;
- c. characteristics of proposed developments that would be

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preferred by the municipality (examples might include cluster developments, adaptive re-use, transit-oriented housing, mixed-use development, inclusionary housing, etc.) or

d. municipally owned parcels for which the municipality commits to issue requests for proposals to develop low or moderate income housing.

4. Within 90 days after its submission to the Department by a municipality's chief elected official, the Department shall approve the plan if it meets the requirements specified herein, otherwise, it shall disapprove the plan. The Department shall notify the municipality of its decision to either approve or disapprove a plan in writing. If the Department disapproves a plan, the notification shall include a statement of reasons for the disapproval. A municipality that originally submitted a plan that had been disapproved may submit a new or revised plan to the Department at any time. A municipality may amend its plan from time to time if the Department approves the amendment. If the Department fails to mail notice of approval or disapproval of a plan or plan amendment within 90 days after its receipt, the plan or plan amendment shall be deemed to be approved.

5. The Department shall certify annually whether a municipality is in compliance with an approved plan. The Department shall determine whether a municipality is in compliance within 30 days of receipt of the municipality's request for such a certification. If the Department determines the municipality is in compliance with its plan, the certification shall be retroactive to the date the certification was requested.

6. Units which are created and which are eligible to be counted toward a municipality's low or moderate income housing stock between August 1, 2002 and December 31, 2002 shall be credited toward the municipality's increased low and moderate income housing stock for the first year of planned production, regardless of the date the plan is submitted to or certified by the Department. An approved plan shall take effect for the purpose of the definition of "consistent with local needs" in M.G.L. c. 40B section 20 only when the Department certifies that the municipality has approved permits resulting in an initial annual increase in its low or moderate income housing units of 3/4 of 1% of total housing units in accordance with its plan. It is the responsibility of the municipality to request such certification from the Department. If a zoning board of appeals grants a comprehensive permit, the units will be credited toward the municipality's low and moderate income housing when the comprehensive permit becomes final in accordance with 760 CMR 31.04(1)(a). In order for the units authorized under the comprehensive permit to be credited toward the municipality's low and moderate income housing for the duration of the use restriction, the municipality must submit evidence of and certify to the Department that building permits have been issued for those units.

7. Once the Department has made such a certification of initial compliance and subsequent annual certifications of compliance:

a. The Board may, in its discretion, choose to deny or approve with conditions any comprehensive permit applications for the period of one year from any certification,

and such denial or approval with conditions shall be deemed consistent with local needs; or, alternatively,

b. The Board may, in its discretion, choose to deny or approve with conditions any comprehensive permit applications for the period of two years from any certification, if, in the year for which certification is sought, the municipality has increased its low and moderate income housing stock by at least 1.5% of total housing units.

(2) Balancing. If a town or city attempts to rebut the presumption that there is a substantial regional housing need which outweighs local concerns,

(a) the weight of the housing need will be commensurate with the proportion of the city or town's population that consists of low income persons; if few or no low income persons reside in the city or town, the strength of housing need will consist of regional need alone,

(b) the weight of the local concern will be commensurate with the degree to which the health and safety of occupants or town residents is imperiled, the degree to which the natural environment is endangered, the degree to which the design of the site and the proposed housing is seriously deficient, the degree to which additional open spaces are critically needed in the city or town, and the degree to which the local requirements and regulations bear a direct and substantial relationship to the protection of such local concerns; and

(c) a stronger showing shall be required on the local concern side of the balance where the housing need is relatively great than where the housing need is not as great.

(3) Evidence to be Heard. The Committee will hear evidence only as to matters actually in dispute. Below are examples of factual areas in which evidence may be heard if it is relevant to issues in dispute. These examples are not all inclusive.

(a) Health, Safety, and the Environment. The Committee may receive evidence of the following matters:

1. Structural soundness of the proposed building;
2. Adequacy of sewage arrangements;
3. Adequacy of water drainage arrangements;
4. Adequacy of fire protection;
5. Adequacy of the applicant's proposed arrangements for dealing with the traffic circulation within the site, and feasibility of arrangements which could be made by the city or town for dealing with traffic generated by the project on adjacent streets;